Supreme Court, U.S.
FILED

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No.....

.....

IN THE SUPREME COURT OF THE UNITED STATES
March Term, 1998

.....

Francis osei-Afriyie,

Petitioner,

v.

Grace Ampofoh,

Respondent.

.....

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

.....

PETITION FOR WRIT OF CERTIORARI

Francis Osei-Afriyie
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QUESTIONS PRESENTED

1. WHETHER BY ISSUING AN ORDER THAT A NON-MARITAL PROPERTY (OVER WHICH THE FAMILY COURT ADMITTED IT HAD NO JURISDICTION) BE SOLD AND PROCEEDS USED TO PAY PETITIONER IN A PROPERTY DIVISION PROCEEDING FOLLOWING A DIVORCE WITHOUT NOTICE AND OPPORTUNITY TO BE HEARD, DELAWARE COURTS DENIED PETITIONER HIS DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

2. WHETHER BY FAILING TO APPLY MANDATORY PROVISIONS UNDER DELAWARE DIVORCE CODE IN A PROPERTY DIVISION FOLLOWING A DIVORCE, DELAWARE COURTS DENIED PETITIONER EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

3. WHETHER BY DENYING PETITIONER PERMISSION TO CALL AND EXAMINE HIS WITNESS(ES), DELAWARE COURTS DENIED HIM A FULL AND FAIR OPPORTUNITY TO LITIGATE AN ISSUE RELATED TO A PROPERTY IN GHANA?

LIST OF PARTIES TO THE PROCEEDINGS BELOW

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IN THE SUPREME COURT OF THE UNITED STATES
MARCH Term, 1998

.....

FRANCIS OSEI-AFRIYIE,

PETITIONER,

V.

GRACE A. AMPOFOH,

RESPONDENT

.....

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF DELAWARE

.....

PETITION FOR WRIT OF CERTIORARI

Francis Osei-Afriyie petitions for issuance of a writ of certiorari to review the Delaware Supreme Court's affirmance of the decision and order of the Family Court of the State of Delaware, in and for Kent County.

OPINIONS BELOW

The Orders of the Supreme Court of Delaware(App.16a and 17a) are unreported. The decision of the Family Court of the State of Delaware In and For Ker. County (1a) is also unreported.

JURISDICTION

The Order of the Supreme Court of Delaware was entered on January 7, 1998. Petitioner's timely motion for reargument (18a) was denied on January 26, 1998. The jurisdiction of this Court is invoked under U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him...

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> ... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The due process provisions of the Delaware Constitution provide in pertinent part:

Article I, Sec. 7.

> In all criminal prosecutions, the accused has the right to be heard...nor shall he be deprived of life, liberty or property, unless by the judgement of his peers or by the law of the land.

Article I, Sec. 9.

> All courts shall be open; and every man for an injury done him in his reputation, person movable or immovable possessions, shall have remedy by the due course of law; and justice administered according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense. Suits may be brought against the State, according to such regulations as shall be made by law.

28 *U.S.C.* Sec. 1257 provides in pertinent part:

> Final judgements or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
> (3) By writ of certiorari, ... where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or

commission held or authority exercised under, the United States.

Title 13 *Del.C.* Sec. 1509 provides in pertinent part:

> (a) Upon the filing of a petition for divorce or annulment, a preliminary injunction shall be issued against both parties to the action, enjoining them from:
> (1) Transfering, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life, and requiring the parties to notify the other of any proposed extraordinary expenditures and to account to the Court for all extraordinary expenditures after the preliminary injunction becomes effective...

Title 13 *Del.C.* Sec. 1513 states, in pertinent part:

> ``(a) In a proceeding for divorce or annulment, the Court shall, upon request of either party, equitably divide, distribute and assign the marital property between the parties without regard to misconduct, in such proportions as the Court deems just after considering all relevant factors including:

(6) The contribution or dissipation of each party, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker or husband.

(b) For purposes of this chapter only, ``marital property'' means all property acquired by either party subsequent to the marriage except:
(1) Property acquired by an individual spouse by bequest,devise or decent or by gift...;
(2) Property acquired in exchange for property acquired prior to the marriage;
(3) Property excluded by valid agreement of the parties; and
(4) The increase in value of property acquired prior to the marriage.
(c) All property acquired by either party subsequent to the marriage is presumed to be marital property regardless of whether title is held individually in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in paragraphs (1) through (4) of subsection (b) of this section.

STATEMENT

Petitioner was respondent's boy-friend from 1967 until he left Ghana for overseas in 1973. In 1980, he returned to Ghana to teach and married respondent. He returned to Canada for further studies in 1980. Respondent joined him in 1981. But petitioner had to buy her the airline ticket since she did not have the financial resources to purchase one.

Upon arrival in Canada, respondent informed petitioner that the parties had a daughter in 1973 (23a) and the daughter was being raised by the maternal grandparents. The parties provided for the `daughter'. In early 1990s, petitioner found out that the parties did not have a daughter in Ghana (58a). Indeed, the so-called `daughter' was respondent's sister and it was a scheme designed by respondent to constantly siphon off money to her parents (30a,44a,49a,51a,54a-61a; brief, pp.3-4), and to later petition the Immigration and Naturalization Service (INS) to bring her sister into the U.S. under a classification for which the sister would not qualify under normal circumstances. In August 1996, respondent filed a petition with the INS to bring the sister into the U.S. as her daughter. Brief, pp.3-4.

During the marriage, the parties had joint and separate accounts from which

they acquired their assets and maintained their livelihood. Respondent paid $2,541.04 more than petitioner from her separate account to acquire the marital home. Petitioner also bought the funiture in the marital home from his separate account. He also paid over $3,000 more than respondent to acquire the 25 and 17 Spruance Road properties from his separate account. In addition, he spent money from his account to maintain and repair all the properties (24a-26a). He also was solely responsible for the family's medical and dental expenses throughout the parties' stay in CANADA (From April 1981-April 1985). From April 1981 until August 1982, when the parties lived on the campus of Simon Frazer University petitioner was responsible for all expenses. Indeed, in her answering brief, p.3, she stated:

> ``Initially Appellant contributed more towards these expenses but throughout most, and especially, the latter half of the marriage, Appellee contributed equally to not only the monthly living expenses but also debts created to finance the acquisition of capital assets.''

Petitioner walked 3 1/2 miles (one- way) down a steep hill with respondent for her to catch the bus at 6:30 a.m. (5 days a week) at the nearest bus stop to go to work. The hill was so steep that after walking petitioner became tired (26a)

and somtimes missed his 8:00a.m. classes that jeopardized his Ph.D. program. Lastly,when respondent became unemployed in 1984 in Canada for about 7 months(69a), petitioner was primarily responsible for all expenses until the parties moved to the U.S. in April 1985.

Over the years, respondent sent money to Ghana to take care of a daughter who turned out not to be our daughter. She sometimes collected the rent on the parties' rental properties and deposited it into her separate account. Respondent also withdrew over $4,800 from a joint account and deposited it into her individual account (41a-49a). The 17 Spruance property was purchased on September 23, 1992. By September 28, 1992 respondent had told petitioner that she was not interested in that property, demanded her contribution of $1,260 and had it refunded to her. Petitioner's contribution towards the downpayment was $6,723.95. Brief, pp.9-10; From the time she had her contribution refunded to her until she again changed her mind and became interested in that property, petitioner was solely responsible for the mortgage payments, maintenance and repairs on it.

The Decision and Order appealed from purported to `equitably' divide the marital asset. In his appeal, petitioner argued that, **in many instances**, the Family Court's Decision and Order

violated his rights to due process and equal protection of the laws under the 14th Amendment to the U.S. Constitution. **Some aspects of the Family Court's decision and order and rulings require emphasis.** For instance, the court issued an order on a non-marital property over which it had no jurisdiction (4a-5a,15a) without giving petitioner notice and opportunity to be heard. Also, the Court failed to give petitioner equal protection of the laws by not placing upon respondent the burden of showing why an asset acquired during marriage was to be excluded from division contrary to the mandatory statute (13a-14a,p.5). Lastly, the court ruled that it would consider in the property division, contributions respondent had made towards the construction of a property in Ghana (52a-61a) as well as some expenses petitioner had incurred (68a-69a). But the court failed to mention those, let alone consider them in the property division (13a-15a).

On the first issue, respondent argued that the issue was moot because on the day her brief was due (November 17,1997), she wrote a check for $26,024 to be given to petitioner. Petitioner responded that the issue was not moot. He refused to accept the check arguing, among other things, that the $26,024 was being disputed and it was left to the Delaware Supreme to decide whether the Order on a

non-marital property without a hearing violated petitioner's constitutional rights. She did not respond to the second issue. On the third issue, she responded that the trial court did not`forget' about the ruling but she could not show how those sums of money were distributed.

Upon review, Delaware Supreme Court affirmed the Family Court's Decision and Order without citing any authority. Petitioner made a motion for reargument (18a-22a) but it was denied (17a).

This Court should grant a writ of certiorari to correct these egregious constitutional violations, and to resolve two issues of continuing importance- (1) under what circumstances may courts issue orders on properties over which they have no jurisdiction without a hearing?, and whether courts may decline to give citizens equal protection of the laws?

A. Proceedings in the Family Court

In August 1995, the Family Court exercised jurisdiction over ancillary matters following a divorce. The parties engaged in discovery. Respondent requested materials from petitioner on two occasions and they were turned over to her. Petitioner, in turn, requested similar materials from respondent but she refused to produce them. As a result, petitioner had to file two motions for production of documents and the court

granted the motions and issued two orders (July 13 and November 15). Respondent complied with the 1st court order but she failed to fully comply with the 2nd order. Specifically, she refused a produce bank statements from Wilmington Trust on account #2704-5987 (26a-28a). Petitioner sent correspondence on non-compliance of the court order to the court but judging from the court's decision, (13a-15a), that court did nothing.

During the hearing, the court made some important rulings which petitioner relied upon (34a, 54a-55a; brief, pp.32-33). But the court failed to **follow** or comply with its own rulings in its Decision and Order. This was a complete surprise to petitioner that could not have been anticipated based on *Eberly v. Eberly*, 489 A.2d 433, 443(1985). Also, respondent withdrew her request for attorney's fees at the conclusion of the hearing (68a) and petitioner requested the award of attorney's fees from respondent (68a) for (1) rejecting an appraisal submitted by his attorney from Mr. Owens and respondent accepting the appraisal when Mr. Owens appeared in court to testify and (2) for being unreasonable and uncooperative throughout the litigation. **But the court issued an order (14a), on respondent's request which had been withdrawn** and ignored petitioner's request (29a,33a-41a). Such

a conduct is grossly unfair and against 13 *Del.C.* Sec. 1513(a), p.4.

ARGUMENT

It is well settled under the Delaware Divorce and Annulment Act, 13 Del. C., Chapter 15, and repeated in numerous cases that: all property acquired by either spouse during the marriage, regardless of how such property be titled, is ``presumed'' to be marital property, subject to division by the Family Court upon divorce. 13 Del.C. Sec. 1513(c), p.4. Section 1513(b), however, provides that the marital property presumption is subject to four exceptions. Those exceptions are:

(1) Property acquired by an individual spouse by bequest,devise or decent or by gift...;

(2) Property acquired in exchange for property acquired prior to the marriage;

(3) Property excluded by valid agreement of the parties; and

(4) The increase in value of property acquired prior to the marriage.

The burden of overcoming this statutory presumption and proving that the property sought to be excluded falls within one of the four statutory exceptions is placed upon the party seeking to exclude the property from division between the parties. For consistency in the

application of this mandatory statute, see *Lynn v. Gallagher*, 526 A.2d 878, at 882 (Del. Supr.1987); *Gregg v. Gregg*, 510 A.2d 474, 478 (Del. Supr. 1986); *Frank G.W. v. Carol M.V.*, 457 A.2d 715, 722 (Del. Supr. 1983); *E.C.W. v. M.A.W.*, 419 A.2d 934, 937, (Del. Supr. 1980); *Husband R.T.G. v. Wife G.K.G*, 410 A.2d 155, 159 (Del. Supr. 1979); *J.D.P. v. F.J.H.*, 399 A.2d 207, 211 (Del. Supr. 1979).

But the Family Court failed to require respondent to carry the burden of showing that assets she requested be excluded from division fell under any of the four statutory exclusions. Instead, that court stated the following in its decision:

> Although individual bank accounts and pension plans are considered marital property, in this case, in light of the fact each party managed their separate accounts and finances for the duration of the marriage, it would be inequitable to now attempt to split the accounts and equalize the balances to the detriment of the more frugal party.Therefore, each party shall maintain their individual accounts titled in their names... Each party shall retain 100% their own pension and deferred compensation plans...(13a-14a).

On appeal petitioner argued that the above rationale deprived him of equal protection of the laws guaranteed under the 14th Amendment to the Constitution and of a fair share of the marital asset.

He argued that under Delaware law, the fact that an individual spouse may have control over marital property, and determine its placement into either a joint or separate account, or into other property, is not dispositive of the legal issue of chracterization for the purposes of property division, brief pp.11-15. See *Halsey v. Charlotte,* 419 A.2d 962, 965(Del. Fam. Ct. 1980). **This case has NEVER been OVERRULED.** Hence, marital assets in Delaware are awarded not on the basis of who controls or manages them and courts have consistently considered personal accounts, stocks, cars etc. as marital asset subject to division. *Wright v. Wright,* 469 A2d 803, 806 (Del. Fam. Ct. 1983); *Lynn v. Gallagher,* supra.). Brief, pp.14-15, Reply brief, pp. 2-3. See *Diamond National Corp. v. State Equalization Board,* 425 U.S. 268, 268-270 (1976) where a consistent construction and application of California statute was given weight by this Court. But without statutory authority from the General Assembly, the Family Court had **manufactured** an **additional** property division statute based on ``control'' and ``management'' **applied only** in this case despite consistent application of **existing** statute by Delaware courts. **This departure from applying the existing statute was discrimatory and deserves this Court's attention.**

Second, respondent admitted at trial that in March 1996 she unilaterally withdrew over $4,800 from the parties joint account (41a-49a) **(IN VIOLATION OF 13 Del C. Sec. 1509, p.4)** and collected the rent on all the four rental properties from April 1996 to June 1996 (31a-32a) and deposited the sum into her individual account. She also testified that petitioner did repairs on the properties and installed a fence on 13 and 15 Spruance properties (25a-26a). Again, she admitted in open court that she periodically sent money from her individual account to her parents for their upkeep, contributed to buy a parcel of land in GHANA and contributed at least another $5,000 to construct a building on that land. Lastly, respondent initially denied that the parties had joint accounts until they opened one in 1991. But upon cross-examination and after production of evidence she was unwillingly forced to admit that the parties had 3 accounts at least since 1988 and before 1991. Finally, she testified that petitioner paid the rent, utilities, medical and dental expenses when she first arrived in CANADA and the parties lived on the university campus until they left and rented an apartment downtown (60a-61a). Respondent arrived in Canada in April 1981 and the parties moved downtown in August 1982.

Petitioner again argued on appeal that the sums of money in individual accounts and contributions respondent sent to Ghana should have been subject to division by the Family court.

13 *Del. C.* Sec. 1513(a) imposes on the Family Court the duty to ``equitably divide'' all marital property after considering ``all relevant factors including'' Sec. 1513(a)(6), p.4. Since the term dissipation[1] is not defined by statute, reference must be made to its commonly accepted meaning, considering the context in which the word is used in our statute.

In the context of Sec. 1513(a)(6), ``dissipation'' is used as an antonym for the contribution...of each party in the acquisition, preservation... of the marital property... and one party's ``dissipation'' must be weighed against the other party's ``contribution'' and then related to the allocation of marital property. *E.E.C.*, id. 457 A.2d 688, 695 (Del. Supr. 1983). Petitioner spent the money in his individual account on the rental properties, the marital home and on the family.

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[1] Dissipation n.1.a. The act of scattering. b. The condition of being scattered; dispersion. 2. Wasteful consumption or expenditure. 3. Dissolute indulgence in pleasure; intemperance. 4. An amusement; a diversion.

The American Heritage Dictionary of the English Language.

Clearly then, evidence of a party's `dissipation' or ``diversion''of marital income or other marital property is a statutory factor to be considered in arriving at an equitable division of the marital property. In *A.I.D. v. P.M.D.*, 408 A.2d 940, 943 (Del.Supr. 1979), that court recognized Sec. 1513(a)(6) as a`legislative mandate to consider dissipated property when an equitable division of property is to be made...'

Indeed, after the Family Court had ruled that the Ghana house was ``non-marital'' (a ruling which was objected to and which petitioner will shortly discuss), and without explicit reference to 13 *Del. C.* 1513(a)(6), it ruled that it would consider as factors to be weighed in effecting an equitable division of property between the parties, respondent's $5,000 contribution plus any additional contribution adduced at trial which she might have made to that house (54a). The court also ruled that it would consider the circumstances under which Mr. Owens appeared in Court in its distribution (68a-69a). But, there in nothing in the Court's decision and order that it did so. Surely, the Court should have considered the portion of marital property that respondent contributed to the Ghana house,the fee petitioner paid Mr. Owens to go to court as well as petitioner's expenses that went to preserving the marital property.

See *Eberly v. Eberly*, 489 A.2d 433, 443(1985). But again, the Family court did not do that.

Notwithstanding all the above, the Family Court distributed the marital estate as found at 13a-15a. Viewing the court's decision and order in the context of the record, petitioner argued that the Family Court's decision was inequitable since it denied him equal protection of the laws by failing to consider all mandatory and pertinent statutory factors set out in 13 *Del. C.* Secs. 1509 and 1513. This is similar to *E.E.C.*, id. 457 A. 2d 688, at 699. Therein, that court reversed a Family court's property division since it was made without due regard for all pertinent statutory factors set out in 13 *Del. C.* Sec. 1513(a)1 through (11). But the Delaware Supreme Court affirmed the lower court's decision and order. **However, this case** - in which petitioner prays for a writ to review such affirmance **so seriously infringes constitutional and statutory rights**, where they raise on their face a substantial question of whether the Family court acted within its statutory and constitutional mandates - **is a proper occasion for this Court to make clear that courts do have and must act within the confines of the law.**

Petitioner was denied a full and fair hearing at the Family Court.

This Court has set forth some factors which a court might examine to determine whether a party had been afforded a``full and fair opportunity'' to litigate a particular issue. Among them are:(1) whether the court purported to apply the applicable legal standards and two(2) whether without fault of his own the party was deprived of crucial evidence or witnesses in the prior litigation. *Blonder-Tongue v. University Foundation,* 402 U.S. 313, 332-333, 91 S.Ct. 1434, 28 L.Ed 788(1971*); Studeingesellschaft, mbl v. USX Corp.*, 675 F. Supp. 182 (D.Del.1987).

The record shows that the Family Court failed to apply all the pertinent statutory factors embodied in 13 Del. C. Sec.1513. The record also shows that petitioner was denied a request to call and examine his witnesses who were in Ghana about the ownership and value of a property in Ghana.

The facts are the following:

On July 3, 1996 at a hearing on Motion to Withdraw as Counsel and Motion for Production of Document, the Family Court stated that because the among in controversy on the Ghana property was small, it would not be prudent to bring witnesses from Ghana into the U.S. to testify. Following the hearing,

respondent's previous counsel sent a letter to petitioner in which she stated: ``I think it makes a great deal of sense to having any witnesses from Ghana testify by phone.'' app. to petitioner's brief, p.188. Petitioner agreed with her in his response, app.to brief,p. 191.

Petitioner stated in his 52D submission that he would call his witnesses from Ghana to testify by phone. The court was again contacted by phone and petitioner was informed that he would be responsible for the phone bill. He agreed to pay the phone bill the court would incur.

However, at trial counsel opposed calling the witnesses to testify by phone on the grounds of relevancy and violation of respondent's rights under the 6th Amendment to the Constitution. The court then denied petitioner's request. (47a-48a,54a). Petitioner immediately objected to the court's ruling, arguing that there are exceptions to rules of evidence and the 6th Amendment Confrontation Clause. See D.R.E 804 (a)(5); *United States v. Weber*, 437 F. 2d 327, 339; *Ohio v. Roberts*, 448 U.S. 56 (1980); *Pointer v. Texas*, 380 U.S. 400, 407 (1965).

Again on appeal, petitioner argued that he was denied a ``full and fair opportunity'' to trial on the Ghana property citing exceptions to rules of evidence and the 6th Amendment Confrontation Clause. Respondent also advanced the same argument as was done at

trial. The Delaware Supreme accepted respondent's argument by its affirmance of the trial court's decision and order. It is important to note that the Family court **NEVER** mentioned the Ghana property, let alone respondent's contribution to it in its decision and order. The court totally ignored it as if petitioner had not requested that it be included in the property division **and** as if that court had not ruled on it as previously indicated,(54a);p.17. That was a serious omission and a miscarriage of justice.

It is again important to mention that petitioner testified that respondent had told him that she was building a house in Ghana. The record also shows that on June 11, 1993, approximately two years before the parties' divorce, respondent had written a letter to Mr. Sarfo soliciting his help to complete her house in Ghana (69a-70a). Respondent testified that in November 1993, while in Ghana, she had a conversation with Dr. Michael Owusu-Akyaw about the house in Ghana and asked him to supervise its completion in her absence. She gave money to Dr. Owusu-Akyaw to pay the workers upon its satisfactory completion. In June 1994, while on an assignment in the U.S., Dr. Owusu-Akyaw wrote to the parties stating: ``...As I indicated in my letter, I supervised and paid the workers who worked on your wife's building; the job was well done.''

Respondent sent Dr. Owusu-Akyaw $50 as appreciation for honoring his promise. Copies of respondent's letter to Mr. Sarfo and Mr. Sarfo's response as well as Dr. Owusu-Akyaw's letter were on record at time of trial, app. to brief, pp. 180-184. Petitioner believes he was entitled, in the interest of a fair trial, to call at least Dr. Owusu-Akyaw to question him and ascertain the nature of his conversation with respondent and on what basis he stated ``your wife's building'' as indicated above. That content of the conversation between respondent and Dr. Owusu-Akyaw would have been relevant to establish ownership of that property. Also, it would have corroborated respondent's statement in her letter to Mr. Sarfo stating:

``... I have been strongly advised by Osei-Yaw to contact you for assisting me to complete my house in Nyinahin. I shall be sending you money if you offer this important help in my life...''

In fact, the D.C. Circuit in *U.S. v. Paxton*, 861 F. 2d 730, 734 (1988), ruled that a statement by a party's agent or servant concerning a matter within the scope of agency or employment, made during the existence of the relationship is admissible under Fed. R.Evid. 801(d)(2) (quoting the 10th Circuit and this Court). See *United States v. Young*, 736 F.2d 565, 567(10th Cir. 1983), 470 U.S. 1. Consequently, the denial by the

Family court of the request to call witnesses under the protection of the 6th Amendment simultaneously deprived petitioner of his rights to a fair and full trial. This Court should examine whether petitioner had a fair opportunity procedurally, substantively and evidentially to pursue his claim the first time.

THE DENIAL OF DUE PROCESS OF LAW ON THE HANCOCK PROPERTY

The Family court had stated in open court that it had no jurisdiction over the non-marital Hancock property . Also, see decision and order (4a-5a). But in its Order (15a), the court stated that to equalize payment, respondent was to pay petitioner $26,024 two months after the sale of the non-marital property and distribution of proceeds. The order gave respondent unlimited duration of time to pay petitioner which was a violation of his constitutional rights. See *Eberly*, id. 442. Nevertheless, **when a statute limits the jurisdiction of a court, it must be strictly interpreted.** Emphasis added. See *Sanders v. Sanders*, 570 A.2d 1189, 1193(Del. Supr.1990), quoting *Theisen v. Hoey*, 51 A.2d 61 (Del. Ch., 1947). The court issued the order without a hearing despite the substantial amount of liquid assets awarded respondent **and despite** the fact that she possessed no

interest legal or otherwise in that property as of June 4, 1997. On that date, petitioner bought respondent out of the property by securing a loan of $45,000 to pay her. Therefore, the Family court's order should not be treated lightly by this Court. The consequence of not following the statute (13 *Del.C.* Sec.1513) was to violate petitioner's rights.

In response to petitioner's argument, respondent argued that the merit of petitioner's claim was moot because on the day her answering brief was due(November 17, 1997), she wrote a check for $26,024 to be given to petitioner. Petitioner did not accept the check. Instead, he argued in his reply brief that the Family court's property division was inequitable and the Delaware Supreme Court should determine whether the trial court's order on the non-marital property violated his constitutional rights. Why did respondent delay from June 1977 until November 1997 to attempt to pay petitioner when the latter paid exorbitant interest on the loan while the former earned interest on the $45,000?

Cases may become moot because of a change in the law, or in the status of the parties, or because of some act of one of the parties which dissolves the controversy. *Commercial Cable Co. v. Burleson*, 250 U.S. 360 (1919); *County of Los Angeles v. Davis*, 440 U.S. 625(1979).

But this Court has developed several exceptions which operate to prevent many of the cases in which mootness is alleged from being in law moot. Among them is the ``voluntary cessation'' doctrine which focuses on whether challenged conduct which has lapsed is likely to recur. *Southern Pacific Co. v. ICC*, 219 U.S. 433, 452(1911). Thus, cessation of the challenged activity by the voluntary choice of the person engaging in it, especially if he contends that he was properly engaging in it, will moot the case if it can be said with assurance``that `there is no reasonable expectation that the wrong will be repeated.' '' *United States v. W.T. Grant co.*, 345 U.S. 629, 633(1953)(quoting *United States v. Aluminium Co.* of America, 148 F.2d 416, 448(C.A.2 1945). Otherwise, ``the defendant is free to return to his old ways'' and this fact would be enough to prevent mootness because of the ``**public interest in having the legality of the practices settled.**'' *United States v. W.T. Grant Co.* id., 632. Emphasis added.

In the instant case, the Family court's conduct has been sanctioned by the Delaware Supreme Court and there is no assurance that that court would not issue an order to affect petitioner's or another party's property interest over

which that court has no jurisdiction.[2] Consequently, the order is not moot. This order was issued without a hearing and denied petitioner opportunity to be heard in defense of his interest. Hence, the Family court acted outside the framework of applicable law and totally disregarded petitioner's due process rights under the 14th Amendment.

Finally, petitioner argued on appeal that the Family court's conclusions were against the weight of the evidence and unsupported by the law. Pages 25-32 of brief. For instance, the court stated that the Delaware Health Resources Board has been subject to several sunset dates that have previously been amended by the General Assembly...''(8a). That statement was totally unfounded. One only needs to examine the history of Chapter 93 of Title 16. The 134th General Assembly amended the original 1978 statute(61 *Del. Laws* ch. 393) in 1987 with 66 *Del. Laws* ch.90. The 136th General Assembly revised some provisions of ch. 93 in 1991. See 68 *Del. Laws* ch.29. In 1994, the 137th General Assembly gave shape to the current Chapter 93 of Title 16 with 69 *Del. Laws* ch. 251. It is in this enactment that the sunset provisions,

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[2] A court order becomes the law of the case. See, Joseph(B.P.) v. Kathleen(M.P.), 469 A.2d 800, 802 (1983). This law should not be allowed to stand.

ch.93, sectiom 9311, first appear. Section 9311 states:

> The Board and all provisions of this chapter shall sunset June 30, 1996. Prior to this date, the Delaware Health Care Commission or its successor agency shall have completed a review of the effectiveness of Certificate of Need.

The General Assembly first amended Section 9311 in June 1996. See 70 *Del. Laws*, ch.446. That amendment implements the Commission's recommendations in response to a directive of the 137th General Assembly and sunsets the Board. The Family court also concluded that wife was ``always employed during the entire length of the marriage'' (8a). That fact was totally incorrect. In fact, respondent testified that she did not work for 7 months in 1984(69a).

B. Proceedings in Delaware Supreme Court

On appeal, as previously stated, petitioner argued that the Family court acted outside the confines of its legislative mandate, divided the marital estate without due regard for all pertinent statutory factors set out in 13 *Del. C.* Sec. 1513, failed to comply with the Supreme Court's own procedural guidelines for property division set out in *Husband R.T.G. v. Wife G.K.G.*, 410 A.2d 155(1979) and denied petitioner due process of law and equal protection of

the laws under both the 14th Amendment to the U.S. Constitution and the State of Delaware Constitution, Article I, Secs. 7&9. Surprisingly, however, the Supreme Court affirmed the Family court's denial of petitioner's Constitutional rights and, thereby, renounced its power to protect petitioner's rights and privileges secured by the 14th Amendment and the Delaware Constitution. Petitioner's motion for reargument (18a-22a) was equally denied (17a). The affirmance of the Family court's decision and order is totally inconsistent with that court's own cases cited in this petition.

For instance, in *Abel G.S. v. Badrban*, 453 A.2d 94, 97 (Del. Supr. 1982), that Court gave the following warning to the Family Court:

> The Court and its power are solely the result of statute, and when proceeding on what is perceived to be an equitable basis, the trial judge could not do so in disregard of the law or in violation of the rights of the litigants.

Also, in *R.T.G.*, 410 A.2d 153, 158, id. the same court stated:

> It is, therefore, essential in the public interest that Judges of the court who exercise its statutory

power apply the same basic approach in the administration of Sec. 1513.

If a Family Court Judge failed to do the above, that Court continued,

``... We cannot avoid our responsibility for consistency in the administration of the law.''

Conclusion

For reasons expressed and the authorities cited herein, a case has, therefore, been made that the Delaware Supreme Court sanctioned a lower court's violation of petitioner's 14th Amendment constitutional rights and avoided its responsibility to oversee consistency in the administration of the law. This Court must grant a writ of certiorari and exercise its supervisory power to give back to petitioner his rights denied him by Delaware courts. For, there is nothing more fundamental or basic than one's constitutional rights to due process of law and equal protection of the laws. They are the essence of our legal system and the cornerstone of the public's trust and respect for that system. They must be protected and protected by this Court.[3]

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[3] Petitioner contacted respondent's attorney to file a joint appendix but he declined. He indicated respondent would file her own appendix. Petitioner accepted a check for $26,024 on 3/9/98 from respondent.

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